

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, D.C. 20554

June 18, 2019

Copies sent by E-mail

NOTICE OF FORMAL COMPLAINT

**MCI COMMUNICATIONS
SERVICES, INC.,**

Complainant,

V.

WIDE VOICE, LLC,

Defendant.

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Proceeding Number 19-121
Bureau ID Number EB-19-MD-003

Curtis L. Groves
Verizon
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
curtis.groves@verizon.com

Lauren J. Coppola
Robins Kaplan LLP
800 Boylston Street, Suite 2500
Boston, MA 02199
LCoppola@RobinsKaplan.com

Scott H. Angstreich
Joshua Hafenbrack
Sean Nadel
Kellogg, Hansen, Todd, Figel
& Frederick, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
sangstreich@kellogghansen.com

Counsel for Defendant

Counsel for Complainant

Dear Counsel:

On June 14, 2019, MCI Communications Services, Inc. (Verizon) filed with this Commission a formal complaint against Wide Voice, LLC (Wide Voice) under Section 208 of the Communications Act of 1934, as

amended (the Act), 47 U.S.C. § 208.¹ Wide Voice should have a copy of the Complaint as served by hand delivery by Verizon. *See* 47 CFR § 1.734(c). If that is not the case, Wide Voice immediately should contact Commission counsel.

Lisa Boehley and I are Commission counsel for this proceeding. My phone number is (202) 418-7273, and my e-mail address is lisa.griffin@fcc.gov. Lisa Boehley's phone number is (202) 418-7395, and her e-mail address is lisa.boehley@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing Section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740.²

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's formal complaint rules and with this Notice.³

1) By July 3, 2019, Wide Voice must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by Wide Voice must be filed and served concurrently with the answer. 47 CFR § 1.730(a). Responses to any motions filed with the complaint should also be submitted with the answer.⁴

¹ Formal Complaint of MCI Communications Services, Inc., Proceeding Number 19-121, Bureau ID Number EB-19-MD-003 (filed June 14, 2019) (Complaint).

² *See also* Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. *See Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, Section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

³ Staff has authority under Sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with Section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. *See* 47 CFR § 1.721(g), (k).

⁴ Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . . .")).

2) By July 10, 2019, Verizon must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by Verizon must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within 7 calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days after service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by July 19, 2019. The parties may submit these two joint statements in a single document if each is separately identified therein. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97.

5) An initial status conference in this proceeding has been scheduled for July 25, 2019 at 9:30 am (EDT), at the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 CFR § 1.733. We strongly encourage each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. After clearing security at the 12th Street entrance, the parties should call Lisa Boehley at 418-7395 to be escorted to the conference. *See* 47 CFR § 1.733. **The parties also should be prepared to spend at least two hours in conference.**

6) For purposes of managing the development of the record, we will assume that the 5-month deadline set forth in section 208(b) of the Act, 47 U.S.C. § 208(b), applies in this proceeding. *See Formal Complaints Order*, 12 FCC Rcd at 22511-14, ¶¶ 32-37. Thus, absent extraordinary circumstances, we are unlikely to grant any extensions of the deadlines stated herein, and we intend to establish and enforce tight deadlines for any discovery and briefing. Moreover, to the extent permitted at all, discovery and briefing will likely conclude by August 30, 2019. The parties and their counsel should plan their schedules accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau Id Number referenced above (*see, e.g.*, 47 CFR § 1.7), and (b) be addressed to the Commission Secretary. If a party seeks to file both a public version and a confidential version of a submission, it should file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. *See* 47 CFR § 1.731. In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. *See* 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. *See* 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under Sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, Sections 1.3 and 1.720-1.740 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, and the authority delegated in Sections 0.111 and 0.311 of the Commission's Rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Lisa B. Griffin". The signature is fluid and cursive, with the first name "Lisa" and last name "Griffin" clearly distinguishable.

Lisa B. Griffin
Deputy Division Chief
Market Disputes Resolution Division